Tanjung Rhu Land Sdn Bhd & Anor v Kauthar Venture Capital Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCvC-4945–10 OF 2023
GAN TECHIONG JC
5 APRIL 2024

Land Law — Caveat — Removal of — Application by plaintiffs for removal of caveat on land lodged by first defendant — First defendant applied for leave to file further affidavits to resist plaintiffs' application one day before hearing — Whether first defendant's application to file further affidavits ought to be allowed — Whether plaintiffs' application for removal of first defendant's caveat ought to be allowed

The first plaintiff was the registered proprietor of a land ('the land'). The second plaintiff was a company that had entered into contracts with the first plaintiff and had interests in the land as well several plots of land adjacent to the land. The plaintiffs commenced this action by way of an originating summons ('OS') to remove a private caveat lodged by the first defendant on the register document of title of the land and for damages. The first defendant had affirmed an affidavit to resist the plaintiffs' application to remove the caveat. In response, the plaintiffs filed an affidavit-in-reply thus closing the exchange of affidavits for the plaintiffs' application. Written submissions were filed by both sides and the plaintiffs' application was fixed for hearing. Just a day before the hearing date, the first defendant filed an application for leave to file further affidavits to resist the plaintiffs' application.

Held, dismissing the first defendant's application and allowing the plaintiffs' application:

(1) The further affidavits that the first defendant was attempting to adduce as further evidence were for the purpose of exhibiting documents from OS 701, in which the plaintiffs were not parties thereto. Though Bank Pembangunan Malaysia Bhd, as the plaintiff therein, was also seeking an order to remove the first defendant's caveat, the cause papers in OS 701 were wholly irrelevant for the court to decide whether the first defendant had a caveatable interest in the land to justify the entry of the first defendant's caveat. Further, the fact that another party, who was also aggrieved by the presence of the first defendant's caveat, had filed an application in another court did not create a 'duplicity of proceedings' — especially when the present case was filed earlier and was ready for hearing on merits. Therefore, the first defendant's application for leave to file

A further affidavits which was filed just a day before the hearing date of the plaintiffs' application was devoid of merit (see paras 16–18).

(2) The first defendant's affidavit that was filed to resist the plaintiffs' application was completely lacking in facts that could possibly amount to a caveatable interest in the land. Under company law, a shareholder did not have any personal interest in the assets of the company. A shareholder of a company may caveat land belonging to the company if and only if he was doing so in a different capacity, for example, as a purchaser of the company's land or as an intended transferee pursuant to any voluntary liquidation exercise where there was an order authorising the company to distribute its real properties to its shareholders. Otherwise, a shareholder — as in this case simply as a shareholder *sui juris* — had no caveatable interest in his company's land (see paras 33–35).

[Bahasa Malaysia summary

Plaintif pertama adalah pemilik berdaftar sebidang tanah ('tanah'). Plaintif kedua merupakan sebuah syarikat yang telah memasuki kontrak dengan plaintif pertama dan mempunyai kepentingan dalam tanah tersebut serta beberapa lot tanah bersebelahan tanah itu. Plaintif memulakan tindakan ini melalui satu saman pemula ('SP') untuk mengeluarkan kaveat persendirian yang didaftarkan oleh defendan pertama pada dokumen pendaftaran hak milik tanah tersebut dan untuk mendapatkan ganti rugi. Defendan pertama telah mengesahkan afidavit untuk menentang permohonan plaintif bagi mengeluarkan kaveat tersebut. Sebagai jawapan, plaintif memfailkan afidavit balasan, dengan itu menutup pertukaran afidavit untuk permohonan plaintif. Kedua-dua pihak memfailkan hujah bertulis dan permohonan plaintif ditetapkan untuk mendengar. Hanya sehari sebelum tarikh pendengaran, defendan pertama memfailkan permohonan kebenaran untuk memfailkan afidavit lanjut bagi menentang permohonan plaintif.

Diputuskan, menolak permohonan defendan pertama dan membenarkan permohonan plaintif:

(1) Afidavit lanjut yang cuba dikemukakan oleh defendan pertama sebagai keterangan lanjut adalah bertujuan untuk mengekshibit dokumen daripada SP 701, yang mana plaintif tidak terlibat di dalamnya. Walaupun Bank Pembangunan Malaysia Bhd, sebagai plaintif di sana, turut memohon perintah untuk mengeluarkan kaveat defendan pertama, kertas kausa dalam SP 701 adalah tidak relevan langsung untuk mahkamah membuat keputusan sama ada defendan pertama mempunyai kepentingan boleh kaveat atau tidak di atas tanah tersebut untuk membenarkan pendaftaran kaveat oleh defendan pertama. Selain itu, fakta bahawa pihak lain, yang juga terjejas oleh kehadiran kaveat defendan pertama, telah memfailkan permohonan di mahkamah lain tidak menjadikan keadaan ini sebagai 'kependuaan prosiding' —

terutama apabila kes sekarang sudah difailkan lebih awal dan sedia untuk didengari atas meritnya. Oleh itu, permohonan defendan pertama untuk kebenaran memfailkan afidavit lanjut — yang difailkan hanya sehari sebelum tarikh pendengaran permohonan plaintif adalah tidak berasas (lihat perenggan 16–18).

(2) Afidavit defendan pertama yang difailkan untuk menentang permohonan plaintif adalah sepenuhnya tiada fakta yang mungkin menunjukkan kepentingan boleh kaveat di atas tanah tersebut. Di bawah undang-undang syarikat, seorang pemegang saham tidak mempunyai kepentingan peribadi dalam aset syarikat. Seorang pemegang saham syarikat boleh mengkaveat tanah milik syarikat hanya jika ia berbuat demikian dalam kapasiti yang berbeza, contohnya sebagai pembeli tanah syarikat atau sebagai penerima pindah milik yang dimaksudkan mengikut proses penggulungan sukarela di mana terdapat perintah yang membenarkan syarikat membahagikan harta sebenar kepada pemegang sahamnya. Jika tidak, seorang pemegang saham seperti dalam kes ini, sekadar sebagai pemegang saham *sui juris* — tidak mempunyai kepentingan boleh kaveat di tanah syarikatnya (lihat perenggan 33–35).]

Cases referred to

Hew Sook Ying v Hiw Tin Hee [1992] 2 MLJ 189, SC (refd)

Hun Tee Siang (menyaman atas kapasitinya sebagai pemegang jawatan di Persatuan Penduduk Country Heights Damansara, Kuala Lumpur) & Ors v Mega Palm Sdn Bhd & Anor [2021] MLJU 2788; [2024] 6 CLJ 56, HC (refd)

Nanyang Development (1966) Sdn Bhd v How Swee Poh [1970] 1 MLJ 145, FC (folld)

Score Options Sdn Bhd v Mexaland Development Sdn Bhd [2012] 6 MLJ 475, FC (folld)

Ladd v Marshall [1954] 1 WLR 1489, CA (refd)

Legislation referred to

National Land Code ss 322, 324(1), 326, 327, 327(1), 329, 329(1), Forms 19B, 19C

Rules of Court 2012 O 32 r 13(2)

Liew Seong Yee (with Yiew De Quan) (Shearn Delamore & Co) for the plaintiffs.

Christie Marie a/l Mariasoosai Nathan (with Jusween Kaur) (Christie Soosay Nathan & Assoc) for the defendants.

Wafiy bin Azman watching brief for Bank Pembangunan Malaysia Bhd.

Gan Techiong JC:

INTRODUCTION

[1] One of the features of the Torrens System, as codified in our National Land Code ('the NLC'), permits a person with caveatable interest in any land in peninsular Malaysia to enter a private caveat on the register document of title of the land very expeditiously by simply filling in a standard form (Form 19B) prescribed under the NLC, stating the nature of the claim on which his application is based, affirming a short statutory declaration to verify his claim and paying a small fee to lodge a private caveat.

[2] Since private caveats could be entered so easily and cheaply, they could be misused to block legitimate transactions from being registered — just as I had found to be the situation in this case. I therefore allowed the plaintiffs' application for an order to remove the defendant's caveat. My reasons, in detail, are as explained below.

THE PLAINTIFFS' APPLICATION FOR REMOVAL OF THE FIRST DEFENDANT'S CAVEAT

[3] The first plaintiff is the registered proprietor of land held under HS(D) 623 PT 904 Mukim Ayer Hangat, Daerah Langkawi, Kedah ('the said land'). The second plaintiff is a company that had entered into contracts with the first plaintiff and has interests in the said land as well several plots of land adjacent to the said land.

[4] The plaintiffs commenced this action by way of an originating summons (encl 1) to remove a private caveat lodged by the first defendant ('the first defendant's caveat') on the register document of title of the said land and for damages to be assessed and paid by the first defendant. The registrar of land titles of Kedah was initially named as the second defendant but the plaintiffs had discontinued their claim against the second defendant — who would have been a nominal defendant in any event.

[5] The first defendant's director had affirmed an affidavit on 30 November 2023 to resist the plaintiffs' application to remove the first defendant's caveat. In response, the plaintiffs filed an affidavit-in-reply on 12 December 2023 to reply to the first defendant's said affidavit, thus closing the exchange of affidavits for the plaintiffs' substantive application (encl 1).

[6] Written submissions were filed by both sides and the plaintiffs' application was fixed for hearing on 5 April 2024.

[7] On 4 April 2024, which was just a day before the hearing date of the plaintiffs' application on 5 April, the first defendant filed an application (encl 33) for leave to file further affidavits to resist the plaintiffs' application. I heard encl 33 and decided to dismiss it with no order as to costs. Thereafter, the plaintiffs' substantive application (encl 1) was heard and I decided to allow prayer (1) and (5) thereof, to remove the caveat and for damages to be assessed, and lastly, for costs of RM8,000 to be paid by the first defendant to the plaintiffs.

TWO NOTICES OF APPEAL WERE FILED BY THE FIRST DEFENDANT

[8] Since there were two notices of appeal filed by the first defendant, to appeal against my decisions in dismissing encl 33 and allowing encl 1 respectively, my reasons for both decisions shall be stated herein.

[9] I shall state my reasons first for dismissing the first defendant's application to file further affidavits, followed by my reasons for allowing the plaintiffs' substantive application.

THE FIRST DEFENDANT'S APPLICATION TO FILE FURTHER AFFIDAVITS

[10] As mentioned above, the first defendant's application (encl 33) for leave to file further affidavits to resist the plaintiffs' application was filed on 4 April 2024, which was just a day before the hearing date of the plaintiffs' application on 5 April 2024. The final affidavit-in-reply was filed on 12 December 2023, and written submissions had been filed and exchanged more than three months earlier, in January 2024.

DECISION REGARDING THE FIRST DEFENDANT'S APPLICATION TO FILE FURTHER AFFIDAVITS

[11] The first defendant's said application (encl 33) for leave to file further affidavits, contained the following prayers:

(1) Defendan diberikan kebenaran dan lanjutan masa bagi memfailkan Afidavit Tambahan yang mengekshibitkan Saman Pemula No WA-24NCvC-701–02/2024 yang difailkan oleh Bank Pembangunan Malaysia Berhad pada 22.2.2024, Afidavit Sokongan yang diikrarkan oleh Nik Nor Aini Nik Mohamed pada 21.2.2024 dan Afidavit Jawapan yang diikrarkan oleh Fazlan Azri bin Tajudin pada 27.3.2024 yang difailkan di dalamnya;

A (2) Defendan diberikan kebenaran untuk memfailkan Afidavit Tambahan yang mengandungi Afidavit-Afidavit lanjut yang akan difailkan dalam Saman Pemula No WA-24NCvC-701–02/2024 selepas tarikh pemfailan Notis Permohonan masakini;

B **[12]** The proceedings in Originating Summons No WA-24NCvC-701–02 of 2024 mentioned in the first defendant's prayers were actually first filed in the Commercial Division of the High Court, and registered as Originating Summons No WA-24NCC-88–02 of 2024 ('OS No 88'). OS No 88 was subsequently re-registered as WA-24NCvC-701–02 of 2024 because C applications to remove caveats are generally fixed for hearing at the Civil Division of the High Court.

[13] The intitulement of OS No 88 (subsequently registered as OS No 701) D shows that Bank Pembangunan Malaysia Bhd is the plaintiff therein. Though the defendant in these proceedings is the same defendant as in OS No 88, that does not in any way affect the plaintiffs' claim in this case. A screenshot of the intitulement of OS No 88 is pasted below for convenient reference:

E

WA-24NCC-88-02/2024

Encl No. 1

H0272101 WA1324108289 22/02/2024 14:10:48

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN DAGANG) .....160.00 x 1

F SAMAN PEMULA NO.: _____ 02/2024 Jumlah RM 160.00

ANTARA

G BANK PEMBANGUNAN MALAYSIA BERHAD ...Plaintif
(No. Syarikat: 197301003074(16562-k))

DAN

KAUTHAR VENTURE CAPITAL SDN BHD ...Defendan
(No. Syarikat: 198801001297 (168654-A))

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[14] In *Hun Tee Siang (menyaman atas kapasitinya sebagai pemegang jawatan di Persatuan Penduduk Country Heights Damansara, Kuala Lumpur) & Ors v Mega Palm Sdn Bhd & Anor* [2021] MLJU 2788; [2024] 6 CLJ 56, I had opined that there would be situations where an additional affidavit is justifiable I and ought to be permitted after the close of exchange of affidavits before a decision is pronounced by the court. I was also of the view that those three '*Ladd v Marshall* conditions' could, *disjunctively*, provide invaluable guidance to a court of first instance in deciding whether to admit further additional affidavits after the exchange of affidavits pursuant to O 32 r 13(2) of the ROC

had closed, and even after written submissions had been filed.

[15] Of those three '*Ladd v Marshall* conditions', the second condition ought to be the primary condition to be satisfied because *the new evidence, if given, must have an important influence on the result of the case*, although it need not be decisive. On the contrary, if the new evidence, if given, would have no important influence on the result of the case, there would be no justification whatsoever to allow the further affidavit — which would invariably necessitate an adjournment of the hearing to grant the opposing party an opportunity to file an affidavit-in-reply and/or for counsel to prepare to address the further affidavit evidence.

[16] In our present case, the further affidavits that the first defendant was attempting to adduce as further evidence were for the purpose of exhibiting documents from OS No 701 (originally registered as OS No 88) in which the plaintiffs herein are *not* parties thereto. Though Bank Pembangunan Malaysia Bhd, as the plaintiff therein, was also seeking an order to remove the first defendant's caveat, the cause papers in OS No 701 were wholly irrelevant for this court to decide whether the first defendant has a caveatable interest in the said land to justify the entry of the first defendant's caveat.

[17] Further, the fact that another party, who is also aggrieved by the presence of the first defendant's caveat, had filed an application in another court does not create a 'duplicity of proceedings' — especially when the present case was filed earlier and was ready for hearing on merits.

[18] Based on the reasons explained above, I was of the view that the first defendant's application (encl 33) for leave to file further affidavits — which was filed just a day before the hearing date of the plaintiffs' application on 5 April 2024 — was devoid of merit. I therefore dismissed it and proceeded to hear the plaintiffs' substantive application.

DECISION REGARDING THE PLAINTIFFS' APPLICATION TO REMOVE THE FIRST DEFENDANT'S CAVEAT

[19] A registered proprietor of any land in peninsular Malaysia is presumed under the NLC to be aggrieved by the existence of any caveat on his land title, and has a statutory right under s 326 of the NLC to demand its removal by applying to the registrar of land titles whereupon the registrar shall issue and serve a notice (in Form 19C) on the caveator. If the caveator fails to obtain a court order to extend his caveat, the registrar will cancel the caveat upon the expiry of two months specified in the said notice.

[20] Instead of applying to the registrar of land titles pursuant to s 326, a

registered proprietor may apply to the High Court pursuant to s 327(1) of the NLC which states: 'Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal ...'. The High Court has the power to order the removal of a private caveat on urgent basis upon an ex parte application if the circumstances so require.

[21] In this case, the first plaintiff is the registered proprietor of the said land, and indisputably had the locus standi to apply to remove any caveat entered on the title of its land — as is clear from a reading of s 326.

[22] As for the second plaintiff, it had the right to jointly apply with the first plaintiff as a party 'aggrieved' by the existence of the first defendant's caveat that had caused instruments presented for registration on the title of the said land to be rejected.

[23] The question, as to whether the burden of proof in a s 327 of the NLC application rests on the shoulders of the applicant or the caveator, had been answered by the Federal Court in *Nanyang Development (1966) Sdn Bhd v How Swee Poh* [1970] 1 MLJ 145 more than half a century ago. It was held that a caveator bears the burden of proof to justify his caveat. The following passages provide guidance:

> The question in this appeal is: *on whom does the onus lie to satisfy the court that it may remove a private caveat when the registered proprietor aggrieved by its existence applies to the court under s 327 of the National Land Code for an order for its removal?*
>
> The respondent, who is a caveator, says that it lies on the appellant the registered proprietor. The learned judge agreed. The proprietor appeals, arguing that the onus lies on the caveator.
>
> In deciding this matter, it is necessary to bear certain factors in mind. First, under our system of land tenure, the person for the time being registered as proprietor such as the appellant is almighty, and save in certain circumstances his title or interest is indefeasible, s 340, and he may deal with the land in any manner he thinks fit. Secondly, to protect the interest of a person who is also interested in the land, for example a person who has lent money on the security of the land, Part Nineteen of the National Land Code enables such a person to enter a private caveat effected by the endorsement on the register document of title. When applying for the entry of the caveat he must specify on Form 19B the nature of the claim on which his application is based ...
>
> *I am of the opinion that it is for the caveator to satisfy the court that it is just for the caveat to remain*. I say so because, first, as between the proprietor and the caveator, the proprietor is in a superior position; secondly, because the fact that the caveat has been entered on the register does not necessarily mean that the caveator's claim to restrain the proprietor's dealings with the land is necessarily valid in view of sub-s (1) of s 324.

[24] The main prayers in the plaintiffs' application, for an order that the first defendant's caveat be removed and for damages caused by that caveat to be assessed and paid by the first defendant, were worded as follows:

> (1) Kaveat Persendirian yang didaftarkan ke atas tanah yang dipegang bawah dokumen hakmilik H.S.(D) 623, PT 904, Mukim Ayer Hangat, Daerah Langkawi, Negeri Kedah pada 8.11.2022 ('Tanah') dengan Perserahan Nombor: 8550/2022 oleh Defendan Pertama ('Kaveat Defendan Pertama') hendaklah dikeluarkan dan / atau dibatalkan;
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> (5) Ganti rugi untuk ditaksir bagi kemasukan Kaveat Defendan Pertama yang salah;

[25] A private caveat causes serious consequences for a land owner and/or a party with a legitimate interest to be registered on the register document of title of the land. This is because once a private caveat is entered, s 322 of the National Land Code prohibits the registration, endorsement or entry on the register document of title of the land of any instrument of dealing executed by or on behalf of the proprietor (the land owner), and any certificate of sale relating thereto, any claim to the benefit of any tenancy exempt from registration granted by the said proprietor, and any lienholder's caveat. In other words, a private caveat has the effect of a prohibitory injunction for a statutory period of six years unless it is sooner withdrawn by the caveator or removed by the registrar of land titles (a lengthy process of at least three months) or by an order issued by a judge of the High Court.

[26] The need for applications to remove private caveats to be heard expeditiously is heightened by the fact that a private caveat may be entered by any person by simply filling in Form 19B of the NLC, stating the nature of the claim on which his application is based, affirming a statutory declaration to verify his claim and paying a small fee to lodge a private caveat.

[27] When an application to enter a private caveat is received by the land registry, it is *not* required to verify the contents of the application to ensure that a caveator really has a caveatable interest in the subject land. This is because s 324(1) requires the registrar of land titles to endorse the caveat 'without being concerned to enquire into the validity of the claim on which it is based'. In other words, the entry of a private caveat is a purely administrative function by officers of the land registry. This admittedly opens the door for abuse of the system. However, this weakness is 'a necessary evil' — as to require verification would defeat the fundamental objective of enabling the preservation of status quo of a land speedily without applying for an injunction. Thus, the court must hear applications to remove caveats expeditiously, so as not to allow a caveator without caveatable interest to delay and hold a land proprietor to ransom. It was for this reason that I refused the first defendant's application to adjourn the

A hearing of the plaintiffs' application after I dismissed the first defendant's application for leave to file further affidavits.

B **[28]** The law on removal of private caveats had been expounded by the Federal Court and Court of Appeal in numerous reported cases. In *Score Options Sdn Bhd v Mexaland Development Sdn Bhd* [2012] 6 MLJ 475, the Federal Court made it crystal clear that only those who have a claim to a registrable interest in the land title or a claim to any right to such title or registrable interest, may enter a private caveat. The following passages (at p 487) are instructive:

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> It is our considered view, therefore, that based on the provisions of the NLC and the authorities cited above, *the only parties who are authorised to lodge a private caveat are those who may effect dealings in the particular interests in the land*. Those parties may either have a claim to the title to the land or a claim to *a registrable interest in the land* or a claim to any right to such title or registrable interest.
>
> *Emphasis should be given to the words 'registrable interest' in* s 323(1)(a) of the NLC. To be caveatable, the interest must be an interest in the land and that interest must be capable of registration. In short, it must represent a transaction that can ultimately lead to its registration on the register. (Emphasis added.)

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[29] The caveator in *Score Options* had submitted that the rights that it obtained under a joint venture agreement as having conferred upon it the right to enter the subject caveat. This argument was categorically dismissed by the Federal Court with the following explanation:

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> Reverting to this appeal before us, although the appellant has conferred numerous rights on the respondent under the JVPM agreement and the powers of attorney, *all these rights are merely rights to develop the land that would give rise only to a monetary interest,* ie a right in personam against the appellant and does not create any interest in the land. Under the NLC, these rights are not capable of registration. They do not fall under any scheme of dealings in alienated lands as provided under Division IV of the NLC.

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[30] Thus, it is trite that legal rights to develop any land, that would give rise only to a monetary interest, would not give the holder of those rights any 'registrable interest' to become eligible to lodge a private caveat.

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[31] Further, for the purpose of applying *Score Options* to this present case, I would cite another passage therefrom, as authority that a caveator must have *a present interest as opposed to a potential interest* in the land, to be eligible to lodge a caveat. The following words of Arifin Zakaria CJ (as he then was) were unequivocal:

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> It is also our considered view that the caveator under s 323(1)(a) of the NLC *must have a present interest as opposed to a potential interest in the land.* The registrable

interest that the caveator is claiming for, must be an existing interest. The caveator under s 323(1)(a) of the NLC must be limited to those who are claiming to an existing interest in the land or right to such existing interest and cannot include potential interest or interest in futuro.

This principle is firmly embedded in our Torrens system. This can be seen in the decision of the Supreme Court in *Tan Heng Poh v Tan Boon Thong & Ors* [1992] 2 MLJ 1. In that case, a caveat lodged by a residuary beneficiary was ordered to be removed because the administration of the estate was still incomplete at the time the caveat was lodged, as such his interest in the land was still unascertainable.

[32] The caveat entry application form (Form 19B) filed by the first defendant in this present case disclosed no registrable interest in the said land. It stated as follows:

ii. Kauthar memilik 80% saham dalam Tanjung Rhu Land Sdn. Bhd., ('TR Land') yang merupakan pemilik berdaftar tanah dalam Jadual di bawah.

iii. Baki 20% saham dalam TR Land dimiliki oleh Perbadanan Kemajuan Negeri Kedah ('PKNK').

iv. PKNK ialah sebuah badan berkanun yang objektif statutorinya adalah: i) 'Menjana dan memperkasakan pertumbuhan sektor utama ekonomi Negeri Kedah'; ii) 'Membangunkan sosio ekonomi melalui pembasmian kemiskinan dan penyediaan peluang pekerjaan'; iii) 'Meningkatkan kemakmuran hidup rakyat Negeri Kedah'.

v. Kauthar dan PKNK menjadi pemegang saham TR Land dan PKNK mencapai objektif statutorinya untuk negeri dan rakyat Kedah melalui TR Land. Melalui projek-projek dan cara lain, PKNK melalui TR Land menunaikan obligasi statutorinya kepada rakyat Kedah yang melibatkan tanah di dalam Jadual di bawah bersama-sama dengan 2 lagi tanah bersebelahan yang dipegang di bawah dokumen hakmilik H.S. (D) 12/1983, PT Lain-lain, Mukim Ayer Hangat, Daerah Langkawi, Negeri Kedah ('Tanah A') dan PN167, Lot 1476, Mukim Ayer Hangat, Daerah Langkawi, Negeri Kedah ('Tanah B').

vi. Projek-Projek yang telah diusahakan oleh Kauthar dan PKNK setakat ini ialah pembangunan Pelan Induk Pembangunan Komuniti, Pengisian Pantai, kebenaran bagi kedai-kedai kecil, jeti nelayan dan warung-warung untuk beroperasi di atas tanah itu. Ia dijelaskan dengan lebih lanjut dalam Akuan Berkanun yang dilampirkan di sini.

vii. Atas alasan-alasan tersebut di atas, Kauthar dengan ini memohon untuk memasukkan kaveat persendirian bagi melindungi hak, tugas dan kewajipan yang Kauthar ada terhadap PKNK dan kemajuan sosioekonomi negeri dan rakyat Kedah berkenaan dengan tanah yang dinyatakan dalam Jadual di bawah.

[33] A perusal of the first defendant's affidavit that was filed to resist the

plaintiffs' application was, with respect, also completely lacking in facts that could possibly amount to a caveatable interest in the said land. The only attempt to create a caveatable interest was at paras 25 and 26 therein, which averred as follows:

> 25. Defendan Pertama dan PKNK menjadi pemegang-pemegang saham dalam TRL untuk menggunakan kepakaran komersial Defendan Pertama dan Tanah A, Tanah B dan Tanah C TRL, untuk membantu PKNK mencapai obligasi-obligasi berkanunnya dan juga membangunkan secara komersial 3 bidang tanah tersebut untuk Defendan Pertama.
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> 26. Walaupun Defendan Pertama dan PKNK adalah dalam undang-undang, pemegang-pemegang saham TRL, Defendan Pertama dan PKNK sentiasa terlibat dalam keputusan-keputusan penting yang diambil oleh TRL untuk pembangunan keseluruhan 3 bidang tanah secara bersama dan holistic, serta keputusan-keputusan tersebut yang akan memberi kesan kepada aspek-aspek sosio-ekonomi kawasan-kawasan sekitar dan Langkawi secara keseluruhannya.

[34] Now, if the first defendant was hoping to assert that a caveatable interest existed by virtue of being a shareholder in the first plaintiff company, the short answer is that under company law, a shareholder does not have any personal interest in the assets of the company. This was highlighted in the judgment of Mohd Azmi SCJ (as he then was) in *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189. Needless to say, this rule is simply a manifestation of the doctrine of separate legal entity between a company and its shareholders. The relevant passage from *Hew Sook Ying v Hiw Tin Hee* is as follows:

> It is a well-established principle of law that a *limited company incorporated under the Companies Act 1965 and the individuals forming the company are distinct legal entities*, however completely in control it might be by one or more individuals of the company (see *Salomon v A Salomon & Co Ltd* [1987] AC 22) (see also *Tunstall v Steigmann* [1962] 2 All ER 417). Any departure from a strict adherence of the principle has only been made to deal with special circumstances where a limited company might well be a facade concealing the real facts behind the corporate veil.
>
> In this appeal, *we must not lose sight of the fact that the company is the registered proprietor of the land under caveat*, and it is the company that sold the property to the appellant at a price of $35,000. The company has in fact handed to the appellant not only the instrument of transfer but also the document of title for necessary registration. In such circumstances, *it is impossible to envisage how the managing director either personally or as a shareholder or as an officer of the company, can be said to have a caveatable claim to title or registrable interest* under s 323(1) merely because of internal squabbles between him and certain directors of the company.

[35] I am of the view that a shareholder of a company may caveat land belonging to the company if and only if he is doing so in a different capacity, for example, as a purchaser of the company's land or as an intended transferee pursuant to any voluntary liquidation exercise where there is an order

authorising the company to distribute its real properties to its shareholders. Otherwise, a shareholder — as in this case simply as a shareholder *sui juris* — has no caveatable interest in his company's land.

CONCLUSION

[36] Faced with trite law as enunciated by the Federal Court in *Score Options* and the doctrine of separate legal entity, the first defendant's caveat simply had no legs to stand on. The first defendant had no caveatable interest whatsoever. Its caveat must therefore be removed forthwith and not to impede the registration of legitimate interests on the land title.

[37] As for the plaintiffs' prayer for damages to be assessed for wrongful entry of the first defendant's caveat, s 329 of the NLC must be given effect to in cases where the court found that the caveator had no caveatable interest.

Section 329(1) of the NLC states:

> (1) Any person or body who, wrongfully or without reasonable cause, secures the entry of, or fails to withdraw, any private caveat *shall be liable to pay compensation to any person* or body who thereby suffers any damage or loss.

[38] Pivotal to the fact that damages may be ordered to be paid to the second plaintiff (which is not the registered proprietor of the said land) is the wording of the said s 329(1) of the NLC. Damages are not limited to just the damage or loss suffered by the registered proprietor of the subject land. Section 329(1) of the NLC holds a caveator liable to pay compensation to 'any person or body who thereby suffers any damage or loss' due to the existence of the caveat that he had wrongfully or without reasonable cause entered, or had failed to withdraw. The first defendant must therefore be ordered to pay compensation to the plaintiffs, the quantum of which is to be assessed.

[39] In conclusion, I allowed prayer (1) and (2) of the plaintiffs' application with costs, to remove the private caveat entered by the first defendant and also for damages caused by the said caveat to be assessed and paid by the first defendant to the plaintiffs.

First defendant's application dismissed and plaintiffs' application allowed.

Reported by Nabilah Syahida Abdullah Salleh